SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 549

DANDY PRODUCTS, INC., A CORPORATION, AND JOSEPH M. GRON, INDIVIDUALLY AND AS AN OFFICER OF SAID CORPORATION, AND JOSEPH M. GRON AND CARLO E. FERRARI, COPARTNERS TRADING AND DOING BUSINESS AS CAPITOL MAILERS,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Dandy Products, Inc., Joseph M. Gron et al., pray that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Seventh Circuit in the above entitled case. The opinion and order of the Court of Appeals were rendered on June 11, 1964 and a final decree was entered on July 10, 1964.

OPINIONS BELOW.

The court below affirmed an order to cease and desist entered by the Federal Trade Commission (hereinafter the "Commission") because of an alleged violation of Section 5(a)(1) of the Federal Trade Commission Act, 38 Stat. 719 (1914) as amended, 15 U. S. C. Sec. 45(a)(1)(1958).

The Initial Decision of the Hearing Examiner is appended hereto as Appendix A. The Commission's order and its opinion, adopting the Initial Decision and order of the Hearing Examiner are appended hereto as Appendix B. The opinion of the Court of Appeals affirming the Commission is reported at 332 F. 2nd 985 and appended hereto as Appendix C.

JURISDICTION.

The order denying rehearing and the final decree of the Court of Appeals, which are appended hereto as Appendix D and Appendix E, were entered on July 7, 1964 and July 10, 1964, respectively. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1)(1958).

QUESTIONS PRESENTED.

1. Is the Commission obliged to inquire into and determine contemporary standards of business fairness in order to administer the Wheeler-Lea Amendment of the Federal Trade Commission Act within the bounds of Article I, Section 1, of the United States Constitution in adjudging specific acts or practices in business as unfair?

2. Does the Commission deny respondents due process of law by finding their business practices to be unfair and ordering discontinuance of such practices without hearing any evidence on the subject of the fairness or unfairness of such practices and thus by apparently basing its determination on official notice of material facts not appearing in the

evidence without affording respondents an opportunity to show the contrary?

3. Did the Supreme Court of the United States intend *Keppel & Brothers* v. *Federal Trade Commission*, 291 U. S. 304, to be a perpetual mandate against the use of chance in the sale of goods in commerce?

4. Was the Commission barred by its finding that a cease and desist order against Joseph M. Gron and Carlo E. Ferrari, copartners trading and doing business as Capitol Mailers, is not warranted from making its order applicable to Joseph M. Gron, copartner trading and doing business as Capitol Mailers.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED.

The statute involved in this case is Section 5(a) of the Federal Trade Commission Act, 38 Stat. 719 (1914), as amended, 15 U. S. C. Sec. 45(a)(1958), which in pertinent part provides that:

> "(a)(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.
>
> "(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations . . . from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

A constitutional provision involved is Article I, Section 1, which provides in part as follows:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

Also involved is Section 8 of Article I of the United States Constitution which provides in part as follows:

> "The Congress shall have the power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

Another provision involved is Article V of the Amendments to the United States Constitution, which provides in part as follows:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law."

STATEMENT.

The petitioner, Dandy Products, Inc., is an Illinois corporation with its principal place of business at 9 South Clinton Street, Chicago, Illinois. The petitioner, Joseph M. Gron, is an officer of the corporate petitioner, who directed and controlled the acts and practices of said corporation, and his business address as such officer is the same as that of said corporation.

The individual petitioners, Joseph M. Gron and Carlo E. Ferrari, are copartners doing business under the partnership name of Capitol Mailers with their office and place of business located at 555 West Adams Street, Chicago, Illinois. Capitol Mailers has since November 1, 1945, been engaged in the business of providing a mailing service to firms in various lines of business, which require assistance in getting out large mailings. Among its customers for whom it provides such mailing services are Sears Roebuck and Company, Standard Oil Company, Swift & Company, Allstate Insurance Company, Lee Ward Company, Dun & Bradstreet, Charles World Encyclopedia and over 100 other firms, one of which was Dandy Products, Inc.

The Federal Trade Commission issued a complaint charging the petitioners with unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, through use of lottery schemes or games

of chance in the sale and distribution of their merchandise. Said complaint charged the petitioners were engaged in the sale in interstate commerce of transistor radios, watches, cameras, ball point pens, toy animals, dolls, small electrical appliances including lamps, cutlery, and other merchandise, to the public and to stimulate the sale of said merchandise the petitioners supplied to the public push cards and instructions describing how the merchandise might be awarded to purchasers of chances on said cards as prizes as well as to the sellers of said chances and thus the merchandise be sold and distributed to the public by means of a lottery scheme or game of chance. The complaint alleged that said practice is contrary to the established public policy of the United States and is unfair.

The petitioners filed an answer denying said charges. Thereafter at Chicago, Illinois, a hearing was held, at which Joseph M. Gron and Carlo E. Ferrari testified adversely in response to subpoenas from the Commission and George M. Holt, Arlene Sisk, and Mrs. Raymond Stover testified on behalf of the Commission that they had received printed material and merchandise from Dandy Products, Inc., and push cards and instruction sheets "similar" to certain Commission exhibits which were presented to them for inspection.

It appeared from the exhibits, including the push cards, that prospective purchasers are given the opportunity of buying the merchandise outright at stated prices, without using the push card, and that on the push cards appeared the statement: "IF YOU DESIRE TO PURCHASE MERCHANDISE FROM US YOU CAN DO SO AT ANY TIME. TOTAL $20.95." One of the three Commission's consumer witnesses, Arlene Sisk, had sent in $20.95 for two transistor radios without using a push card and without complaint about the merchandise which was shipped to her.

The Hearing Examiner, William K. Jackson, who had

heard the proceeding, filed his Initial Decision in which he found Capitol Mailers had merely provided a routine mailing service to Dandy Products, Inc., and

> "A cease and desist order against Joseph M. Gron and Carlo E. Ferrari, copartners trading and doing business as Capitol Mailers, is not warranted and the hearing examiner so concludes."

The Hearing Examiner further found that Dandy Products, Inc., and Joseph M. Gron, individually and as an officer of said corporation, had been engaged in the sale of merchandise to the purchasing public in a manner involving a game of chance or the sale of a chance to procure said articles of merchandise at a price much less than the normal retail price thereof, that said practice is contrary to the public interest and constitutes unfair acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act. He so found despite the fact that no evidence had been presented to prove the method of merchandising to be unfair.

Although the Hearing Examiner had found that the issuance of an order against Joseph M. Gron, copartner trading as Capitol Mailers, was unwarranted, he further found:

> "It should also be pointed out as proposed by complaint counsel and as hereinafter adopted by the hearing examiner, the cease and desist order issued in this proceeding includes both respondent Dandy Products, Inc., and Joseph M. Gron, individually and as an officer of the corporation. Since the order will apply to Joseph M. Gron individually, it will apply to his activities as a partner in Capitol Mailers as well as an officer of Dandy Products, Inc., or in any other capacity and insures the practices found to be against the public interest will be effectively stopped by the order to cease and desist."

Included as a part of the Initial Decision was a cease and desist order commanding Dandy Products, Inc., and Joseph

M. Gron, individually and as an officer of said corporation, "in connection with the offering for sale, sale and distribution of transistor radios, . . . or any other articles of merchandise, in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

> "Supplying to, or placing in the hands of others push cards or any other lottery device or devices, either with merchandise or separately, which are designed or intended to be used in the sale or distribution of merchandise to the public by means of a game of chance, gift enterprise or lottery scheme.
>
> "Shipping, mailing or transporting to agents or distributors, or to members of the purchasing public, push cards or any other lottery device or devices which are designed or intended to be used in the sale or distribution of respondents' merchandise, wares or goods to the public by means of a game of chance, gift enterprise or lottery scheme.
>
> "Selling or otherwise disposing of any merchandise, wares or goods by means of a game of chance, gift enterprise or lottery scheme."

It was further ordered that "the complaint herein be, and the same hereby is, dismissed as respects respondent, Carlo E. Ferrari." The Initial Decision did not dismiss the complaint as to Capitol Mailers or as to Joseph M. Gron and Carlo E. Ferrari, copartners trading and doing business as Capitol Mailers.

The petitioners thereafter filed Exceptions to the Initial Decision in accordance with the Rules of Practice of the Commission, and these Exceptions were orally argued before the Commission, itself. The Commission issued its decision denying petitioners' Exceptions to the Initial Decision and adopting the Initial Decision of the Hearing Examiner as the decision of the Commission.

Upon petition to review the Court of Appeals for the Seventh Circuit affirmed the decision and order of the Commission, holding that the law is firmly established that the sale of goods by means of a game of chance is contrary to the established public policy of the United States and that this practice is no less unfair today than it was in the time of Keppel. The court did not discuss the failure of the Commission to prove the practice unfair with evidence.

REASONS FOR GRANTING THE WRIT.

1. The business practices of millions of American businessmen are controlled by the decisions of the Federal Trade Commission. This Court has never considered the question of what is the criteria or policy laid down by Congress expressly or impliedly for the administration of the Wheeler-Lea Amendment. If there is a policy, businessmen ought to know what it is, lest they innocently run afoul of the law. The Commission recognizes no criteria except the personal and varying attitudes of the Commissioners toward morality.

Section 5, (a) (1) of the Amended Federal Trade Commission Act 15 U. S. C. Sec. 45(a) provides: "Unfair methods of competition in commerce, and *unfair* or deceptive *acts or practices in commerce,* are hereby declared unlawful." (Emphasis supplied.) Section 5, (b) provides that the Commission shall act if it shall appear that a proceeding would be "in the interest of the public". There is no other language in the act to indicate criteria or policy. This Court went into considerable detail in *New York Cent. Securities Corp.* v. *U. S.,* 287 U. S. 12 (1932) at pages 24 and 25 and in the earlier case of *Akron, Canton & Youngstown Railway Company* v. *U. S.,* 261 U. S. 184 at page 184 to show how the term "public interest", as used in the Trans-

portation Act of 1920 was "not a concept without ascertainable criteria". In the latter case this Court said:

> "Going forward from a policy mainly directed to the prevention of abuses, particularly those arising from excessive or discriminatory rates, Transportation Act, 1920, was designed better to assure adequacy in transportation service. This Court in New England Divisions Case (*Akron, C. & Y. R. Co.* v. *United States*) 261 U. S. 184, 189, 190, 67 L. ed. 605, 609, 43 S. Ct. 270, adverted to that *purpose, which was found to be expressed in unequivocal language;* 'to attain it, new rights, new obligations, new machinery were created. The Court directed attention to various provisions having this effect, and to the *criteria which the statute had established* in referring to 'the transportation needs of the public,' 'the necessity of enlarging transportation facilities,' and the measures which would 'best promote the service in the interest of the public and the commerce of the people.' The provisions now before us were among the additions made by Transportation Act, 1920, and the term 'public interest' as thus used is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities, questions to which the Interstate Commerce Commission has constantly addressed itself in the exercise of the authority conferred". (Emphasis supplied.)

What then is the criteria provided by Congress in relation to the expressions, "unfair act or practice," and "the interest of the public," as used in the Amended Federal Trade Commission Act?

In *Schechter* v. *United States*, 295 U. S. 495 (1935), both the opinion of Chief Justice Hughes and the concurring opinion of Justice Cardozo commented extensively upon the differences between the National Industrial Recovery Act and the Federal Trade Commission Act to indicate why

the former was an unconstitutional delegation of legislative power and the latter was not. The latter act did not give the power of an arbitrary imposition of rules of business conduct, but required a consideration of practices in the business community before a businessman might be put out of business. Said Justice Hughes:

> "What are 'unfair methods of competition' are thus to be determined in particular instances, upon evidence, in the light of particular competitive methods and of what is found to be a specific and substantial public interest". (Emphasis supplied.)

In his concurring opinion Justice Cardozo clarified the distinction when he said:

> "If codes of fair competition are codes eliminating 'unfair' methods of competition ascertained upon inquiry to prevail in one industry or another, there is no unlawful delegation of legislative functions when the President is directed to inquire into such practices and denounce them when discovered. For many years a like power has been committed to the Federal Trade Commission with the approval of this court in a long series of decisions". (Emphasis supplied.)

Later, Justice Cardozo said:

> "When the task that is set before one is that of cleaning house, it is prudent as well as usual to take counsel of the dwellers."

But the *Schechter* case, 295 U. S. 495, was decided before the enactment of the Wheeler-Lea Amendment. At the time of the *Schechter* decision the Commission was acting under criteria laid down by Congress, namely, the standard of current competitive business practices, for the Commission could only proceed if the practice was an "unfair method of competition". This criteria was removed after the *Schechter* case by the Wheeler-Lea Amendment. This Court has never ruled upon the constitutionality of that

Amendment. Prior to the Amendment it was necessary for the Commission to determine and show with evidence the deleterious effect the practices of a respondent would have on competition. It should not be supposed however that the broadening of the powers of the Commission left it without obligation to "ascertain upon inquiry" prevailing practices so as to determine standards of practices against which "unfair . . . acts or practices" may be determined. Only by such inquiry and appropriate findings can it condemn a practice without exercising its powers in an unconstitutional manner.

The Federal Trade Commission's function is not that "of censoring the morals of businessmen". *Federal Trade Commission* v. *Keppel & Brother, Inc.*, 291 U. S. 304 (1934). Its duty is "to discover and make explicit those unexpressed standards of fair dealing which the conscience of the community may progressively develop". *Federal Trade Commission* v. *Standard Education Society*, 86 Fed. 2d 692 (1936). (Emphasis supplied.)

The Commission must determine relatively what the morals of businessmen are and relatively what the morals of the community are in which businessmen operate for then only can it determine what is unfair or immoral without imposing a censorship of business. Its function is that of determining the moral tone of the business community and preventing substantial deviations from it, while at the same time allowing the widest latitude of conflict. It is only by administering the Wheeler-Lea Amendment of the Federal Trade Commission Act in accordance with the principles outlined above that it may be distinguished from the National Industrial Recovery Act.

In the case before this Court the practice which is condemned is the sale of merchandise by the use of the element of chance. No evidence was adduced by Counsel for

the Commission of moral standards in the present business community with respect to this type of merchandising. The burden upon the Commission here indicated would have made their case less convenient and, perhaps, the requirement would not have been expedient, but convenience and expediency are not grounds for an unconstitutional administration of delegated power. Counsel for petitioners do not here contend that the Federal Trade Commission Act, as amended, is unconstitutional, but rather that the manner of its enforcement by the Federal Trade Commission with regard to its determination of the unfairness of individual business practices is and that the case before this Court is not an exception.

2. The Commission's order deprives respondents of their property without due process of law by finding their business practices to be unfair and ordering discontinuance of such practices without hearing any evidence on the subject of the fairness or unfairness of such practices or their impact on competitors, consumers or the business community. Since there is no evidence in the record on the subject, the Commission apparently must be basing its determination on official notice of material facts not appearing in the evidence without affording respondents an opportunity to show the contrary.

We earnestly urge that the powers conferred by the Wheeler-Lea Amendment of 1938 to the Federal Trade Commission Act (15 U. S. C. Sec. 45(a) (1)) have been unconstitutionally exercised in this case. Under the original Federal Trade Commission Act of 1914 and until the Amendment of 1938 only "unfair methods of competition in commerce" were declared unlawful. Under this provision the Commission was required in each case to present evidence of the moral standards prevailing in the business community and the existence of competitors of the respond-

ent who were not using the method of competition complained of.

The Wheeler-Lea Amendment of 1938 added to the acts declared unlawful "unfair or deceptive acts or practices." With respect to "deceptive acts or practices" deception can be and always is proven by the Commission with evidence. Evidence is presented showing what advertising claims were made for the product and what the nature of the product is with respect to the matters on which the claims are made. A substantial discrepancy between the advertising claims made and the true merit of the product as established by evidence, provides a factual basis for a finding of deception. The requirement that the charges be proven by evidence and that the Commission bear its burden of proving its charges, is thus met.

But in dealing with "unfair" acts or practices the Commission feels that it should not have to prove what is fair or what is unfair. It wants to just decide this, not prove this. It wishes to prove with evidence what the respondent did and then determine at its conferences and without hearing evidence on the subject whether the thing done was unfair. This is very unlike what is done in the deception cases and in the cases charging the use of unfair methods of competition.

Certainly due process requires that there be evidence in the record establishing that the practice in question was unfair. The determination of unfairness should not be based on the personal opinion, whims or prejudices of the individual Commissioners nor on their officially noticing facts not in the record without giving the respondent the opportunity to show the contrary.

3. In *Federal Trade Commission* v. *Keppel & Brother, Inc.*, 291 U. S. 304 (1934) this Court did not take it upon itself to dictate public policy. Its language was that "it

was clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy". This Court was in effect determining public policy from the common law and criminal statutes which it found to be then existing. That common law and criminal statutes change from time to time can hardly be disputed.

The *Keppel* case has been cited again and again as the gospel which prevents all businessmen from including in any sales plan any element of chance in any business climate. That case was decided in the heart of the greatest depression the country has ever known. The decision dealt with a business of selling candy, which was limited to school children so young that they were "unable to protect themselves". The candy was so packed as to be integrated with a gambling plan. The goods were inferior to that of competing straight goods. This was indeed an extreme case. Should it rule out forever the element of chance in any form in business practice? Would such a position be consistent with the duty of the Federal Trade Commission to follow the progressive development of the "conscience of the community?"

In the last 29 years, culturally and economically, our society has changed radically. Public attitude toward chance has changed, both in entertainment, business and otherwise. Millions watch television programs in which chance is the central theme and they do so projecting themselves in the person of the contestants. Increasing millions of United States citizens put money into the stock market for solely speculative reasons.

The argument made here is two-fold: first, that the employment of the element of chance in merchandising is no less fair or moral than the use of other merchandising techniques in present day business practice and, second, that the use of the element of chance in the manner em-

ployed by petitioners is no less fair or moral than the use of the element of chance by other merchandisers in the business community of today.

As our Gross National Product approaches $600,000,000,000, industry finds it increasingly necessary to find new and different ways to motivate consumer purchases. Motivation research has become an important factor in marketing programs. As a result of motivation studies, marketing campaigns are developed where the emphasis is placed upon emotions, even human weaknesses and frailties, rather than the merits of the product. The day of competition on the basis of merit alone has long since passed, if it ever existed. Merchandisers sell the feeling of security, reassurance of wealth, status symbols, ego-gratification, love objects, a sense of power and of immortality as well as their products. The emotional motives of emulation, individuality and conformity are played upon. Almost since its inception the automobile industry has traded upon psychological obsolescence created by annual model change with its consequent stimulation in consumers of inclinations toward ostentation and prodigality, characteristics which many moral philosophers would place on the lower end of the scale of morality. The point here made is that standards of fair dealing in present day business practice permit of playing upon the emotions of the consuming public even though such action may detract attention from the comparative merits of the goods involved; indeed, the vitality of the distribution of the product of our free enterprise system requires the widest latitude in the development and use of motivating techniques. The essence of free competition is the freedom of businessmen to use whatever motivating techniques their ingenuity may devise.

The morality or immorality of a business practice does not turn on its potential for vice if the standard is to be determined from prevailing practices. Moralists, al-

most universally, regard promise breaking as immoral and, if it be true that it is, as a general proposition, it is all the more capable of verification in commerce, since the entire foundation of our economy rests upon promise keeping. Personal bankruptcies, which involve the wholesale breaking of promises and are, in a large measure, a result of the easy credit policies of merchants, have skyrocketed by more than 450% in the last ten years. Yet, one would not seriously contend that the granting of easy credit by some merchants is unfair to other merchants who sell the same lines of goods on a cash basis, nor that it is unfair to members of the consuming public in the light of prevailing practices. Regulation of credit practices by the Federal Trade Commission on any pretext of unfairness or immorality would be a usurpation of Congressional legislative power.

Like other forms of emotional motivation, chance injected into a merchandising plan adds a feature other than merit and thereby tends to detract from the consumer's rational motivation. It cannot be condemned for this, since prevailing business practices clearly condone the use of emotional motivation. As easy credit has a potential for vice, so the consumer who is exposed to a merchandising plan encompassing a chance element, one might reason, may be led into a life at the race tracks and the slot machines. Again, it cannot be condemned for this, since prevailing standards of fairness condone merchandising techniques which may lead to vice. Easy credit may well lead to bankruptcy. It should be noted that few ethical philosophers view gambling immoral per se, while promise breaking is almost universally agreed to be immoral.

Petitioners' practices cannot be considered unfair because they take advantage of the natural instinct to gamble since industry takes advantages of every instinct in man to merchandise goods as an accepted practice in accord-

ance with present standards of fair dealing; petitioners' practices cannot be considered unfair because they may develop the consumer's tendency toward vice since the most wide spread of merchandising practices, easy credit, leads to an almost universally regarded form of immorality, namely, promise breaking.

A survey of current magazines on any given week throughout the year will reveal several contests sponsored by highly regarded national firms, which may not be directly tied in with purchases of their products, but require participants to get entry blanks from dealers in their products. Are these reputable, well established firms, trading as they are on the consuming public's inclination to gamble, acting below present standards of business or are they setting the standards? Are they unfair to those who do not run contests along with their over-all merchandising plans? Is there any real difference between any of these merchandising plans and those of the petitioners?

Business practices bespeak the standards of businessmen and cannot be ignored. Businessmen in the over all are concerned with their image. The use of the element of chance in merchandising is not new and the fact that it is widely used in business today testified to its recognition as within present business standards.

The whole basis of the *Keppel* decision, 291 U. S. 304, is: "* * * it is clear that the practice is of the sort which the common law and criminal statutes have long deemed contrary to public policy". In the three decade interval since the *Keppel* decision, the criminal statutes dealing with the subject have been undergoing a profound change.

In all, some 24 states have legalized gambling in some form.

The position of the petitioner, Dandy Products, Inc., is not that its sales plan is novel but that the moral tone

of the business community in which it operates is substantially different than the moral climate prevailing when the *Keppel* case, *supra*, was decided thirty years ago. Methods of competition incorporate innumerable motivating devices which are separate and distinct from the merits of the goods being sold, and these motivating devices standing alone might be condemned as vices by a majority but are essential in a dynamic commercial society. This Court should reconsider the position taken in *Keppel* in the light of the business climate of today and, particularly, in view of the use of its dicta by the Federal Trade Commission in its aggrandizement of power.

4. The Commission is barred from making its order applicable to Joseph M. Gron, copartner trading and doing business as Capitol Mailers by its own finding that a cease and desist order against Joseph M. Gron and Carlo E. Ferrari, copartners trading and doing business as Capitol Mailers is not warranted.

The Commission found in part as follows:

> "Under these circumstances, and in the absence of any precedents extending the doctrine of the cases cited to persons engaged in providing mere routine services, a cease and desist order against Joseph M. Gron and Carlo E. Ferrari, copartners trading and doing business as Capitol Mailers, is not warranted and the hearing examiner so concludes."

The Federal Trade Commission Act, 15 U. S. C. Sec. 45(c) provides:

> "The findings of the Commission as to the facts, if supported by evidence, shall be conclusive."

Since the above finding is supported by evidence, the Commission should have dismissed its complaint as to the partnership and both partners as such, and it should be barred from making its order applicable to Joseph M.

Gron's activities as a member of the partnership known as Capitol Mailers.

But the Commission in its decision ruled:

> "Since the order will apply to Joseph M. Gron individually, it will apply to his activities as a partner in Capitol Mailers as well as an officer in Dandy Products, Inc., or in any other capacity and insures that the practices found to be against public interest will be effectively stopped by the order to cease and desist."

CONCLUSION.

The writ of certiorari should issue.

Respectfully submitted,

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